

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

**IN RE THE APPLICATION OF
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS TO UNSEAL
CRIMINAL PROSECUTION OF JULIAN
ASSANGE**

Misc. Action No. 18-mc-37
Related to Case No. 18-cr-111

**RENEWED APPLICATION OF THE REPORTERS COMMITTEE FOR FREEDOM OF
THE PRESS TO UNSEAL CRIMINAL PROSECUTION OF JULIAN ASSANGE**

1. The Reporters Committee for Freedom of the Press (the “Reporters Committee” or “Applicant”) respectfully renews its request for an Order unsealing court records from the United States government’s criminal prosecution of WikiLeaks founder Julian Assange (“Assange”) (hereinafter, the “Assange Prosecution”). Specifically, the Reporters Committee seeks an order unsealing the following sealed court records from the Assange Prosecution: the entirety of the government’s motion to seal filed on December 21, 2017; an arrest warrant issued on December 21, 2017; an arrest warrant issued on March 6, 2018; and a letter. *United States v. Julian Paul Assange*, 1:18-cr-111 (“Assange”) (E.D. Va.), ECF Nos. 5, 7, 14–15.

INTEREST OF THE APPLICANT

2. The Reporters Committee is an unincorporated nonprofit association of reporters and editors dedicated to safeguarding the First Amendment rights and freedom of information interests of the news media and the public. The Reporters Committee has participated as a party and as *amicus curiae* in First Amendment and freedom of information litigation since 1970. The

Reporters Committee frequently represents the interests of the press and the public in matters implicating the public's First Amendment and common law rights of access to judicial proceedings and court records.

3. The Reporters Committee, like all members of the public and the press, has a strong interest in access to criminal matters pending in federal district courts. The press and the public have a particularly powerful interest in access to sealed court records related to the government's prosecution of Assange.

BACKGROUND FACTS

4. Assange is an Australian computer programmer and the founder of WikiLeaks, which describes itself as a "multi-national media organization and associated library." WikiLeaks.org, <https://wikileaks.org/What-is-WikiLeaks.html>. On information and belief, Assange founded WikiLeaks in or about 2006.

5. On or about November 15 and November 16, 2018, *The Wall Street Journal*, *The New York Times*, and *The Washington Post* reported that the Justice Department had filed criminal charges against Assange. See Aruna Viswanatha and Ryan Dube, *U.S. Is Optimistic It Will Prosecute Assange*, Wall Street J., Nov. 16, 2018, <https://perma.cc/WTD2-YKRA>; Charlie Savage, et al., *Julian Assange is Secretly Charged in U.S., Prosecutors Mistakenly Reveal*, N.Y. Times, Nov. 16, 2018, <https://perma.cc/K32Q-UWJW>; Zapotosky & Barrett, *supra*.

6. On or about November 15, 2018, Seamus Hughes, the deputy director of the Program on Extremism at George Washington University, reported that the U.S. Attorney's Office for the Eastern District of Virginia had pasted sections of a motion to seal the charging document in the Assange Prosecution into a publicly available sealing motion filed in an

unrelated matter. *See* @SeamusHughes, Twitter (Nov. 15, 2018, 4:48 PM), <https://perma.cc/Q2UJ-RE3B>.

7. The government unsealed the motion disclosing the Assange Prosecution in the unrelated matter in September 2018. *Id.* The portions of that motion that disclosed the Assange Prosecution are found in paragraphs three and five. *See* Gov’t’s Motion to Seal Criminal Compl. and Supporting Documents Pursuant to Local Rule 49(b) ¶¶ 3, 5, *United States v. Seitu Sulayman Kokayi*, No. 1:18-mj-406 (E.D. Va. Aug. 22, 2018), ECF No. 5. Paragraph three of that motion states that any procedure “short of sealing will not adequately protect the needs of law enforcement at this time because, due to the sophistication of the defendant and the publicity surrounding the case, no other procedure is likely to keep confidential the fact that Assange has been charged.” *Id.* ¶ 3. Paragraph five of the motion states in part that the “complaint, supporting affidavit, and arrest warrant, as well as this motion and proposed order would need to remain sealed until Assange is arrested in connection with the charges in the criminal complaint and can therefore no longer evade or avoid arrest and extradition in this matter.” *Id.* ¶ 5.

8. On November 16, 2018, the Reporters Committee filed an application for an order unsealing court records—including the docket and any criminal complaint, indictment, or other charging document—from the Assange Prosecution. Appl. of the Reporters Comm. for Freedom of the Press to Unseal Criminal Prosecution of Julian Assange, *In re Appl. of Reporters Comm. for Freedom of the Press to Unseal Criminal Prosecution of Julian Assange*, No. 1:18-mc-37 (E.D. Va. Nov. 16, 2018), ECF No. 1.

9. On January 30, 2019, the Court issued an order denying the Reporters Committee’s motion without prejudice. *In re Reporters Comm. for Freedom of the Press to Unseal Criminal Prosecution of Assange*, 357 F. Supp. 3d 528, 531 (E.D. Va. 2019). Analyzing

the Reporters Committee’s request for public access “through the lens of the ripeness doctrine,” the Court held that because the Reporters Committee had “not demonstrated with sufficient certainty that Assange has been charged,” its application to unseal was not ripe. *Id.* at 536–37 (holding that “[u]ntil there is a sufficiently certain disclosure that charges have in fact been filed the [Reporters] Committee’s common law and First Amendment claims are premature.”).

10. On April 11, 2019, Assange was arrested in the United Kingdom under that nation’s extradition agreement with the United States. On information and belief, Assange’s arrest followed his expulsion from the Ecuadoran Embassy in London, where he had been living since 2012.

11. That same day, April 11, 2019, the government unsealed an indictment dated March 6, 2018 charging Assange with one count of conspiring to commit computer intrusions in violation of 18 U.S.C. §§ 371, 1030(a)(1), 1030(a)(2) and 1030(c)(2)(B)(ii). Indictment, *Assange* (E.D. Va. Mar. 6, 2018), ECF No. 8 (the “Assange Indictment”). A true and correct copy of the Assange Indictment is attached hereto as **Exhibit A**.

12. The Assange Indictment alleges, *inter alia*, that Assange “agreed to assist” Chelsea Manning (“Manning”), then an intelligence analyst in the United States Army, “in cracking a password stored on United States Department of Defense computers connected to the Secret Internet Protocol Network, a United States government network used for classified documents and communications” *Id.* ¶ 7. According to the Assange Indictment, “[a]t the time he entered into this agreement, Assange knew that Manning was providing WikiLeaks with classified records containing national defense information of the United States” and “knowingly received such classified records from Manning for the purpose of publicly disclosing them on the WikiLeaks website.” *Id.* ¶ 12.

13. The Assange Indictment was filed in Case No. 18-cr-111. A true and correct copy of the publicly available docket in Case No. 18-cr-111, as of the filing of this Renewed Application, is attached hereto as **Exhibit B**.

14. On April 15, 2019, on the government's motion, the Court unsealed the criminal complaint against Assange and supporting affidavit filed on December 21, 2017 in Case No. 17-mj-611. Criminal Compl., *Assange* (E.D. Va. Dec. 21, 2017), ECF No. 1; Aff. in Supp. of a Criminal Compl. and Arrest Warrant, *Assange* (E.D. Va. Dec. 21, 2017), ECF No. 2. The Court also unsealed the government's motion to unseal those documents and the Court's order granting that motion. *Assange* (E.D. Va. Apr. 15, 2019), ECF Nos. 20–21.

15. On April 16, 2019, counsel for the Reporters Committee contacted counsel for Assange and the government via e-mail to ascertain the parties' respective positions concerning a renewed application by the Reporters Committee to unseal all remaining sealed docket entries in Case Nos. 18-cr-111 and 17-mj-611, as well as other judicial records from the Assange Prosecution that remained sealed in their entirety. In response, counsel for the government informed counsel for the Reporters Committee that the government intended to move to unseal additional materials from the Assange Prosecution.

16. On April 17, 2019, the government moved to unseal certain specific filings in their entirety, and further moved to unseal three documents—*Assange* (E.D. Va. Dec. 21, 2017), ECF Nos. 4, 5; *Assange* (E.D. Va. Mar. 6, 2018), ECF No. 11—in part, through the public filing of redacted versions of those documents. *See* Gov't's Mot. to Unseal, *Assange* (E.D. Va. Apr. 17, 2019), ECF No. 22. Specifically, the government moved to file redacted versions of the Redacted Criminal Case Cover Sheet filed on December 21, 2017 (ECF No. 4), and the Redacted Criminal Case Cover Sheet filed on March 6 (ECF No. 11), to maintain under seal “a portion of

the defendant's address at the time." *Id.* at 2. With respect to the motion to seal filed by the government on December 21, 2017 (ECF No. 5), the government moved to maintain it under seal and file a redacted version for public docketing on the grounds that "it contains nonpublic information about an ongoing criminal investigation" and that "[p]remature disclosure of the information could jeopardize the investigation." *Id.* at 1. The Court granted the government's motion that same day. *See Order, Assange* (E.D. Va. Apr. 17, 2019), ECF No. 23.

17. A true and correct copy of the government's redacted version of its December 21, 2017 motion to seal, which was docketed on April 17, 2019 as ECF No. 24, is attached hereto as **Exhibit C**.

18. On April 18, 2019, counsel for the Reporters Committee again contacted counsel for Assange and the government via e-mail to seek consent for the relief sought by this Renewed Application. Counsel for Assange has stated that Assange consents to the relief sought by this Renewed Application. Counsel for the government has stated that the government does not oppose unsealing of the letter docketed as ECF No. 15 provided that any applicable personally identifiable information is redacted; the government opposes the remaining relief sought by this Renewed Application. Counsel for the Reporters Committee shall meet and confer with counsel for the government and seek to set a hearing on this Renewed Application as soon as practicable.

REQUEST FOR RELIEF

19. The Reporters Committee seeks an order unsealing the entirety of the following court records from the Assange Prosecution: the government's motion to seal filed on December 21, 2017; the arrest warrant issued on December 21, 2017; the arrest warrant issued on March 6, 2018; and a letter. *Assange* (E.D. Va.), ECF Nos. 5, 7, 14–15.

20. The Reporters Committee seeks any further relief that the Court deems just and proper.

Dated: April 18, 2019

Respectfully submitted,

/s/ Caitlin Vogus

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RENEWED APPLICATION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS TO UNSEAL CRIMINAL PROSECUTION OF JULIAN ASSANGE** was filed with the Clerk of Court using the CM/ECF system, and served on counsel for the following via email and U.S. Mail:

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This the 18th day of April, 2019.

/s/ Caitlin Vogus
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